

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

OP.No. 15249 of 1998(M)

PETITIONER:

**G.APPUKUTTAN, P.B.NO.8247.
DEPOT ASSISTANT , FERTILISERS AND CHEMICALS
TRAVANCORE LIMITED, AGRICULTURE
SERVICE CENTRE, MUVATTUPUZHA.**

BY ADV. SRI.R.RAJASEKHARAN PILLAI

RESPONDENTS:

- 1. THE FERTILISERS AND CHEMICALS TRAVANCORE
LIMITED REP.BY ITS MARKETING DIVISION
UDYOGAMANDAL.**
- 2. THE DEPUTY GENERAL MANAGER, F.A.C.T.,
MARKETING DIVISION, UDYOGAMANDAL.**

**BY ADV. SRI.ANTONY DOMINIC
SMT.PRIYA MAHESH**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

S.SIRI JAGAN, J.

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O.P.No.15249 of 1998

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Dated this the 8th day of January, 2007

J U D G M E N T

The petitioner was employed as a Depot Assistant in Kothamangalam mixing centre of the 1st respondent company. Disciplinary proceedings were initiated against him on the allegation that he in collusion with the officer-in-charge, issued false acknowledgment showing receipt of consignment under MDN No.51568 and falsified records showing receipt of them. It appears that the consignment in question was diverted to somewhere else as a result of which, the 1st respondent suffered loss. MDN was signed by the senior depot assistant, Smt.Ambikavathy as well as the petitioner. The officer-in-charge Shri.M.C.Money, and the petitioner herein were together proceeded against in one enquiry, whereas the senior depot assistant, viz., Smt.Ambikavathy was separately proceeded with in another enquiry. Smt.Ambikavathy was exonerated of the charge and the officer-in- charge, M.C.Money

and the petitioner were found guilty. The petitioner was guilty of collusion with the said M.C.Money in the matter of falsifying the records. Ext.P4 was the enquiry report by which, the petitioner was found guilty of the misconduct. By Ext.P7 order punishment of demotion as the junior most depot attender in the marketing division was imposed on the petitioner. Exts.P4 and P7 are under challenge in this original petition.

2. The petitioner raises two contentions. The first is that since the officer-in-charge viz., M.C.Money was in the officer category and the petitioner was in the workman category, the enquiry should have been conducted separately. Further, the petitioner contends that there was absolutely no evidence adduced in the enquiry to show that the petitioner has in any way colluded with the officer-in-charge to commit the misconduct.

3.. The respondents' answer to the petitioner's first contention is that, the petitioner has not objected to the common enquiry at any stage of the enquiry conducted in respect of

the misconducts against the officer-in-charge as well as the petitioner and that in any event, he has not shown any prejudice caused to him on account of such joint enquiry. Regarding the second contention, the respondents would contend that as is evident from Ext.P4 enquiry report itself, there was sufficient evidence in the enquiry to show that the petitioner was guilty of the misconduct alleged against him.

4. I have considered the rival contentions in detail.

5. Regarding the first contention of the petitioner, I am of opinion that it is too late in the day to contend that separate enquiries ought to have been conducted in respect of the misconducts alleged against the officer-in-charge and the petitioner, instead of conducting a joint enquiry as he has not objected to the same at the time of enquiry. Moreover, the petitioner has not been able to show any prejudice on account of such joint enquiry. Therefore, I do not find any merit in the first contention.

6. On the finding of guilt, the specific contention of the petitioner is that the document evidencing the receipt of the consignment, namely MDN No.51568 was in fact signed by both himself and the above said Smt.Ambikavathy and therefore, when Smt.Ambikavathy was exonerated by Ext.P3, there was no justice in finding the petitioner alone guilty. On a perusal of Ext.P3 which is the enquiry report in the case of Smt.Ambikavathy I find that there was a specific finding to the effect that the said Smt.Ambikavathy was misguided by the officer-in-charge and the same was found as a matter of fact on the basis of evidence. On the other hand, in the petitioner's case, specific finding is as follows:-

"7.2.1. It has been proved under Issue 'A' above that two consignments of Urea under MD Nos.50293 and 51568 were diverted and disposed of by OIC Kothamangalam Mixing Centre. However, as per the records of the Mixing Centre these consignments were received at the godown of the Mixing Centre. Acknowledgment of receipt entry were made by Shri.M.C.Money, OIC, PW5 Depot Officer has identified that the receipt entry for MDN No.51568 in the Daily Receipt and Despatch Register (Ext.P7) was in the handwriting of Shri.Appukuttan, chargesheeted employee. The chargesheeted employee had also acknowledged the receipt of the consignment under MDN No.51568 this is an undisputed fact. Further, it is strongly contended by Defence that the consignment was received in the Mixing Centre. According to Defence, chargesheeted employee acknowledge the MDN based on the report of Depot Attender. These circumstances, prove collusion on the part of Shri.Appukuttan with Shri.M.C.Money in

issuing false acknowledgment and making false entries in the relevant records showing receipt of consignment under MDN No.51568. Therefore, it is held that this issue is proved with sufficient evidence.

From the above, I find that not only the petitioner has signed the MDN, but also he prepared the daily receipt and discharge register in his own handwriting. Further, in the enquiry, he strongly contended that the consignment was actually received in the mixing centre whereas it has been proved by cogent evidence that the consignment was never received at the mixing centre and was diverted to somewhere else. In a disciplinary enquiry such evidence is more than sufficient to find the petitioner guilty. In any event, I cannot hold that the finding of guilt of the petitioner on such evidence is perverse, which alone would give me jurisdiction to interfere with such finding, which is settled law. That being so, I do not find any merit in this original petition and accordingly, the same is dismissed.

Interlocutory applications stand closed.

S.SIRI JAGAN, J.

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O.P.No.15249 of 1998
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J U D G M E N T

8th January, 2007